La Favorita, Inc. *and* United Food and Commercial Workers Union, Local No. 7. Cases 27–CA–11014–8, 27–CA–11210, and 27–RC–7014

May 9, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND RAUDABAUGH

On October 24, 1990, Administrative Law Judge Clifford H. Anderson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, and to adopt his recommended Order.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, La Favorita, Inc., Denver, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that Case 27–RC–7014 is severed from Cases 27–CA–11014–8 and 27–CA–11210, and that Objections 3 and 6 to the conduct of the election filed in Case 27–RC–7014 are sustained and the election is set aside; and that Case 27–RC–7014 is remanded to the Regional Director for Region 27 for the purpose of conducting another election at such time as he deems the circumstances will permit the free choice of a bargaining agent.[3]

[Direction of Second Election omitted from publication.]

[1] The Respondent has excepted to the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In adopting the judge's recommended Order directing a new election based on the Respondent's objectionable conduct, we rely on the incidents occurring after the filing of the representation petition on September 20, 1989, in which employee Margarito Gonzales, on behalf of Gilbert Gamez, offered hourly raises to the Garcia brothers in exchange for their antiunion votes, and co-owner Sylvia Gamez questioned employee Margarita Medina about how Medina was going to vote.

[3] The Notice of Second Election to be issued by the Regional Director shall be in both English and Spanish and such other languages as the Regional Director determines are reasonable and necessary to communicate fully with voters, and shall include language informing employees that the first election was set aside because the Board found that certain conduct by the Respondent interfered with the employees' free choice. *Lufkin Rule Co.*, 147 NLRB 341, 342 (1964).

Michael J. Belo, Esq., for the General Counsel.

Gustav V. Achey, Esq., of Denver, Colorado, for the Respondent Employer.

Earnest L. Duran, Jr., Esq., of Wheat Ridge, Colorado, for the Charging Party Petitioner.

DECISION

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard the above-captioned consolidated cases in trial in Denver, Colorado, on various days in the period April 3, through July 18, 1990. Timely posthearing briefs were received on September 12, 1990. The cases arose as follows.

On September 20, 1989, United Food and Commercial Workers Union, Local No. 7 (the Petitioner, the Union, or the Charging Party) filed a petition docketed as Case 27–RC–7014 seeking to represent certain employees of La Favorita, Inc. (the Employer or Respondent). An election was held on November 3, 1989, and thereafter timely objections were filed by the Union. On February 8, 1990, the Acting Regional Director for Region 27 issued a Regional Director's supplemental decision on and objections to election, order directing hearing and notice of hearing, and order consolidating hearing with Case 27–CA–11014–8. That order, inter alia, directed that a hearing be held on Petitioner's Objections 3 and 6.

On October 24, 1989, the Union filed a charge docketed as Case 27–CA–11014–8 against Respondent. Following an investigation on November 16, 1989, the Regional Director issued a complaint and notice of hearing respecting Case 27–CA–11014–8. As noted supra, the two cases were consolidated for a common hearing by the Regional Director's February 8, 1990 order. On February 5, 1990, the Union filed a charge docketed as Case 27–CA–ll210 against Respondent. The Union thereafter amended the charge on March 1, 1990, and further amended the charge on March 6, 1990. Following an investigation, the Regional Director on March 8, 1990, issued an order consolidating cases, consolidated complaint and notice of hearing consolidating the three cases captioned above for a common hearing.

The consolidated complaint alleges that agents of Respondent in August, September, and November 1989 engaged in various acts violative of Section 8(a)(1) of the National Labor Relations Act (Act). The consolidated complaint further alleges that Respondent in December 1989 and January 1990 refused to rehire an employee: (1) because of the former employee's protected concerted and union activities in violation of Section 8(a)(3) and (1) of the Act and (2) because the former employee had given an affidavit to the Board during the investigation in violation of Section 8(a)(4) and (1) of the Act. Respondent denies that it has in any way violated the Act.

All parties were given full opportunity to participate at the hearing, to introduce relevant evidence, to call, examine, and cross-examine witnesses, to argue orally, and to file posthearing briefs.

On the entire record herein, including helpful briefs from the General Counsel and Respondent, and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT[1]

I. JURISDICTION

At all times material Respondent has been a Colorado state corporation with an office and places of business in Denver, Colorado, where it has been engaged in the baking and selling of flour and corn tortillas and the operation of a delicatessen/restaurant.

Respondent in the course and conduct of its business operations, annually purchases and received goods, materials, and services valued in excess of $50,000 from other enterprises within the State of Colorado that received said goods, materials, and services directly in interstate commerce. Respondent annually sells and ships goods, materials, and services valued in excess of $50,000 directly to other enterprises within the State of Colorado that are directly engaged in interstate commerce.

The parties agree, and I find, that Respondent is now and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Respondent is a corporation principally owned by Gilbert Gamez and Sylvia Gamez, husband and wife. Respondent has two facilities, a tortilla bakery and a restaurant-delicatessen a few miles away. On August 14, 1989, the Union through its part-time organizer, Wilbert Martinez, appeared at the tortilla bakery and commenced an organizing campaign. In the days that followed Martinez remained in the area talking to employees where possible. On September 20, 1989, a representation petition was filed by the Union. A Board-conducted election was held on November 3, 1989. The relevant events discussed below occurred in the context of the organization and election campaign.

B. *Evidence*

1. The allegations of violations of Section 8(a)(1) of the Act

a. *Allegations of misconduct by Gamez in mid-August 1989*

(1) Interrogations and threats

Former employee Valentin Garcia testified that he spoke to the union organizer the first day he saw him and gave Martinez his name. Garcia testified that the following day he went to punch his timecard with a fellow employee but discovered that their timecards had been removed from the timecard rack. Valentin Garcia testified that he then spoke to Gilbert Gamez who had possession of the timecards. Gamez, in Garcia's recollection, asked what had been said to the organizer. Garcia answered that ''he had just asked for our names, and that to simply give our names to somebody was not doing anything wrong.'' Garcia recalled that Gamez told him that he had already fired one employee who had given his name to the organizer and that ''if we continued that he was going to fire us, as well.'' Gamez then returned the timecards to the employees and went into his office. Gamez denied that the described events ever took place.

Jesus Raul Rodriguez testified that within a few days of the organizer's appearance, he was standing outside of the plant at the end of the day at a time when Martinez was nearby. Rodriguez testified that he asked Gamez about Sousa, an employee Rodriguez had not seen recently. Rodriguez testified Gamez told him that he had fired Sousa because he had been talking to the ''union man'' and that he would fire Rodriguez if he saw him talking to Martinez. Gamez denied that these events took place.

Rigoberto Briones testified that a few days after the organizer appeared he had a conversation with Gamez while working in which Gamez said ''he didn't want to see anybody talk to Martinez or else he would fire them.'' Gamez denied ever conversing with Briones about the Union.

Alicia Basquez testified that on August 20, 1989, she asked Gamez for a transfer from the evening to the day shift. She recalled Gamez said there was at the time no space available. He then asked Basquez if she had talked to the ''union guy.'' Basquez said no. Gamez continued the conversation, in Basquez' memory, stating that he had let employees go because they had talked to the union organizer. Gamez denied having had this conversation.

(2) Inducement to assault

Valentin Garcia testified that on or about August 19, 1989, he was approached by Gamez as he prepared to use a high pressure hose to wash the floors. Garcia testified that Gamez offered him money to ''give a bath'' to the organizer. Garcia declined, whereupon he was told by Gamez to turn the equipment over to fellow employee Patricio Reyna. In Garcia's recollection, Gamez then told Reyna to ''pretend that he was going to be washing his van, and when Martinez went by to go ahead and spray him.'' Garcia testified that although water was sprayed toward Martinez by Reyna, the effort was not a success and Martinez did not necessarily even get wet.

Patricio Reyna testified that he was not offered money to spray Martinez. Further he testified that the occasion on which he sprayed water toward Martinez while washing the van was inadvertent and unintentional. Gamez denied the conduct attributed to him by Garcia.

b. *Allegation of a promise of raises just before the election*

Margarito Gonzales Herrera, known to the others involved herein as Margarito Gonzales, had been an employee of Respondent for many years. He testified that a week or two before the election Gamez mentioned that he was considering raising the wages of Gonzales and his two cousins, brothers Valentin and Petronilo Garcia, by the sum of 50 cents per hour. About 1 week later, the two had a second conversation.

[1] As a result of the pleadings and the stipulations of counsel at the trial, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the finding herein are based on the pleadings, the stipulations of counsel, or unchallenged credible evidence.

Gamez told Margarito Gonzales that the three employees ''needed to vote against the Union . . . that he would give us 50 cents [per hour wage increase] if we voted against the Union.'' Gamez, in Gonzales' recollection, asked him to convey this message to the brothers Garcia. Gamez denied this conversation took place.

Valentin Garcia testified that he and his brother, Petronilo Garcia, were leaving the plant the day before the election when Gamez approached them. Petronilo continued walking but Valentin stopped to talk. Gamez told him the Union was not a ''bargain'' for employees, but was rather a trick. Gamez, in Valentin Garcia's recollection, then directed him to talk to his cousin and fellow employee, Margarito Gonzales, who, Gamez suggested, ''knew everything.'' Gamez denied these events ever transpired.

Valentin Garcia testified he then spoke to Margarito Gonzales in the parking lot asking him ''what it was that Gilbert [Gamez] was bringing.'' Gonzales reported that Gamez ''was going to offer to increase our salary by one dollar if we voted 'no','' naming the brothers Garcia and himself as the beneficiaries of the promised wage increase. Valentin Garcia responded, in his recollection, ''that it was too late because we had already asked Gilbert for an increase and he had never been willing to give us one.'' Gonzales recalled the events similarly save that the promised increase was 50 cents per hour and that Valentin responded that he could not accept the offer because he was ''inside the Union.''

Valentin Garcia testified he and Petronilo Garcia had a conversation with Margarito Gonzales the following morning, before the election. Valentin Garcia recalled Gonzales told the brothers: ''Gilbert [Gamez] is offering a dollar in order to vote 'no', so earn it.'' Valentin recalled that both he and his brother responded that, inasmuch as they had previously asked for an increase in wages without success, ''we were going to cooperate with the Union as much as we could.'' Petronilo generally corroborated his brother's version of events. Margarito Gonzales' version differed only (1) in his recollection that the events occurred a day or two earlier, (2) that the promised increase was to be 50 cents per hour, and (3) that Petronilo responded that he could not change his opinion because he was already ''inside the Union.''

Gonzales testified that he reported these conversations to Gamez. Gamez denied such a conversation took place. Gonzales received a $.50 per hour wage increase on November 16, 1989.

c. *Allegation of interrogation by S. Gamez on the day of the election*

Margarita Medina, then an employee of Respondent, testified that about 5:30 p.m. on the day of the election she was at a friend's home when she received a phone call. She initially spoke to an employee than to S. Gamez. S. Gamez asked her why she had not gone to vote. Medina answered that she had been busy and that she did not have a ride to the facility where the vote was being held. S. Gamez then asked how Medina was going to vote. Medina answered ''no,'' whereupon S. Gamez said she would send a cab for Medina. Ultimately Medina voted in the election. S. Gamez denied that the interrogation occurred.

C. *The Allegation of Violations of Section 8(a)(3) and (4) of the Act*

On November 12, 1989, Valentin Garcia asked Respondent for a leave of absence. His written request stated:

> Mr. Gilbert Gamez
>
> I'm request a Personal Leave of Absence from the day 11/15/89. Be back until my wife have our baby. I understand that a Personal of Leave of Absence is without pay. When everything past I will return to work.
>
> Sincerely,
>
> Valentin Garcia
> [address omitted]
> [phone number omitted]

After submitting his request, Garcia had a conversation with Gamez at his workplace. Garcia testified that Gamez said:

> Thank you very much for letting me know that you're going to leave because talking is how people understand one another. And he told me that whenever I wanted to return that my job would be there for me, no matter what it were to be.

At the end of the workday on November 15, Garcia received the following letter in Spanish and English:

> Your request for a leave of absence, without pay, beginning November 16, 1989 is granted. The leave of absence is for 5 days. If you do not return to work on or before November 21, 1989 you will have to reapply for employment with La Favorita, Inc. If it is necessary for you to reapply for employment with La Favorita, Inc., you will be given priority consideration if and when there is and [sic] opening.

Mr. and Mrs. Garcia had their baby on November 26, 1989. Complications required Mrs. Garcia to remain at home in bed through December. Valentin Garcia returned to Respondent's bakery on December 15 and there spoke with Gamez. Garcia testified Gamez told him there was no work due to Christmas but that he should continue checking and to fill out a new application. Garcia completed a new application, left the facility and did not return until January 21, 1990. On that occasion Gamez told Garcia he was too late, that others had been hired.

Gamez testified that Respondent had no position available when Garcia announced his availability for work on December 15, 1989. Work did become available on or about December 18, 1989, and, although he testified it was quite unusual, Gamez telephoned Garcia and several others that day to offer each employment. Gamez testified that he called Garcia several times at his home, letting the phone ring for 5 minutes at a time without answer. Mrs. Garcia testified she was bedridden during the month of December and that her telephone was on the night stand next to her bed in operating condition throughout the month. She testified she received no telephone calls from Respondent and could not have missed such a call had it been placed.

D. *Analysis and Conclusions*

1. Credibility resolutions

The parties at trial and on brief ably marshalled argument and authority for their respective positions. In my view however the heart of this case is the strong and consistent conflict between the versions of events offered by Respondent and the General Counsel's witnesses. To an unusual degree the testimony is diametrically in opposition. Resolution of these conflicts in my view significantly resolves the issues in controversy for, once resolution of the factual disputes is concluded, the legal doctrines applicable are uncomplicated and not in essential dispute. It is appropriate then to turn to the conflicting events.

Gilbert Gamez unequivocally denied the statements attributed to him by Valentin Garcia, Jesus Rodriguez, Rigoberto Briones, and Alicia Basquez. I credit each employee over Gamez. I do so in part based on the mutually corroborative pattern of events described by these witnesses. Primarily however, I reach this conclusion because I found Gamez' demeanor to be unpersuasive particularly when arrayed against the various witnesses involved herein. These witnesses were neither glib nor aggressive. The process of translation rendered much of their testimony uneven and halting. Despite these circumstances, I was convinced that they were testifying as best they could to what they recalled took place and that the events and conversations described were neither manufactured nor misattributed.[2] Gamez, however, left me with the strong impression that he was simply denying those events and statements attributed to him which he felt were inconvenient or embarrassing. I do not believe he felt constrained by the truth to fully describe events as he recalled them. I came to the conclusion that Gamez' testimony was designed to sustain a considered defense to the allegations rather than recite events as they were recalled. In making this resolution I include employee Patricio Reyna's testimony in that rejected on the basis of demeanor as constituting no more than incredible, self-serving denials.

The final complaint allegation addressing Section 8(a)(1) of the Act places the testimony of S. Gamez and Margaret Medina in opposition. I found Medina to be a direct and honest witness with a sound demeanor. I did not reach the same conclusion with respect to S. Gamez who, in my view, like her husband, was simply denying a telephone conversation that was embarrassing to admit. I credit Medina's version of the conversation and discredit the denial of S. Gamez.

The allegations respecting Section 8(a)(3) and (4) of the Act array the testimony of Gamez against Mr. and Mrs. Valentin Garcia. Gamez testified that he telephoned the Garcia residence several times on November 18, 1989, letting the phone ring for long periods without getting an answer. Mrs. Garcia testified she was continuously within arm's reach of her telephone and no calls from Gamez came. Mrs. Garcia was a straightforward and convincing witness. I do not credit Gamez who stands earlier contradicted on other aspects of the case by various witnesses each of whom I credited supra. Based on my determinations respecting his credibility set forth supra, I find Gamez did not call Valentin Garcia to offer him employment on December 18, 1989, or any other day, even though on December 18, 1989, he did call other individuals and offer them employment.

2. Conclusions

Given the credibility resolutions described above I make the following conclusions respecting the allegations of the complaint.

a. *The 8(a)(1) allegations concerning Gamez*

I have credited the testimony of the General Counsel's witnesses concerning the statements made by Gamez to employees. Thus, I have found that Gamez, the chief executive officer of Respondent, offered money to employees to assault a union organizer with a high pressure water hose, threatened employees with discharge if they spoke to a union organizer, and told employees other employees had been discharged because they had spoken to a union organizer. Each action is a conventional violation of Section 8(a)(1) of the Act and I so find. Accordingly, I sustain paragraphs 5(a), (b), (c), and (d) of the complaint.

b. *The 8(a)(1) allegation concerning Margaro Gonzales*

I have credited Gonzales, Valentin Garcia, and Petronilo Garcia respecting the conduct they attributed to Gamez, discrediting his denials. Accordingly, I have found that Gamez requested that Gonzales offer wage increases to the Garcia brothers in exchange for their votes against the Union and that Gonzales carried out Gamez' instructions by so informing the brothers and reporting their responses back to Gamez. While Gonzales was not a supervisor, his actions were in precise accordance with Gamez' instructions. There is no doubt therefore that Gonzales was an agent of Gamez and Respondent in carrying out Gamez' instructions. Therefore Respondent is liable for Gonzales' actions.

An employer violates Section 8(a)(1) of the Act when it offers employees wage increases conditioned on their casting votes against a labor organization in an NLRB conducted election. Respondent engaged in such conduct here and therefore violated Section 8(a)(1) of the Act. Accordingly, I sustain paragraph 5(e) of the complaint.

c. *The 8(a)(1) allegation concerning Sylvia Gamez*

I have found above that S. Gamez asked an employee how she was going to vote in the Board election as part of a course of conduct designed to encourage voting by an employee who expressed an intention to vote against the Union. Such conduct is also a traditional violation of Section 8(a)(1) of the Act and I so find. Accordingly, I sustain paragraph 5(f) of the complaint.

d. *The 8(a)(3) allegation concerning the failure to rehire Valentin Garcia*

As set forth supra, I have found that Gamez threatened Garcia with termination if he contacted the union organizer and that Valentin Garcia rebuffed Gamez' monetary inducements both to assault the union organizer and to vote against the Union. Finally, I have found that Gonzales reported to Gamez that Valentin Garcia would not vote against the Union because he was ''inside'' it. These findings establish

[2] This does not mean I accept the recalled dates of the events as fixed. Thus, Valentin Garcia's recited timecard conversation could well have occurred on a different date.

Gamez' knowledge of and hostility to Valentin Garcia's union activities.

Consistent with the unchallenged evidence, I further find that Garcia had been told in writing by Respondent at the time he took his leave of absence that he had ''priority consideration'' for reemployment, that he had announced his desire to return to work on December 15, 1989, that work became available on December 18, 1989, and that Garcia called other individuals on December 18, 1989, to offer them work and thereafter employed them. I find therefore that no valid reasons exists on this record why Respondent should not have offered Valentin Garcia reemployment as of that date.[3] The General Counsel has clearly established a strong prima facie case respecting Respondent's failure to rehire Valentin Garcia.

I have discredited the assertion of Gamez that he attempted to telephone Valentin Garcia on December 18, 1989, to inform him of the availability of work. Rather I found that no such effort was made. Accordingly, I find Respondent fails completely to show why Garcia was not rehired on December 18, 1989. In light of all the above and the record as a whole, I further find that Valentin Garcia was denied reinstatement because of his union activities in violation of Section 8(a)(3) of the Act.

e. *The 8(a)(4) allegation concerning the failure to rehire Valentin Garcia*

The General Counsel further argues that the Union's objection 3, quoted infra, was served on Respondent on November 8, 1989, and that from its language Respondent knew that Valentin Garcia was a source of the information underlying the objection. The General Counsel also notes that Garcia gave the Board an affidavit on December 6, 1989, respecting the allegations. Gamez denied any knowledge of these facts.

The General Counsel is correct that ''a reasonable inference should be made that Gamez suspected either Valentin or Petronilo Garcia of providing evidence to support the Union's objection about the offer of a raise [objection 3]'' (Br. p. 23). The inference to be drawn from the language of the objection however addresses Valentin Garcia giving evidence to the Union not necessarily his giving evidence to the Board. Indeed the objection concludes with the statement: ''This information was reported to Wilbert Martinez, union organizer.'' Given all of the above, I conclude the objection does not support an inference the Respondent knew Valentin Garcia gave an affidavit to the Board. Nor is there any other evidence sufficient to sustain such a finding. Since an employee's cooperation with a labor organization in the preparation of election objections is protected by Section 8(a)(3) of the Act and not Section 8(a)(4) of the Act, no violation of Section 8(a)(4) may be found on this record. Accordingly, I find the General Counsel has not sustained the 8(a)(4) allegation in the complaint. Therefore, I shall dismiss paragraph 8 of the complaint.

[3] In light of the wage increase given Gonzales as discussed above, I also find that Valentin Garcia should properly have received the same increase on his reinstatement and that this fact should be considered in determining the amount of Valentin Garcia's backpay in this matter.

f. *Summary*

Based largely on demeanor and credibility, I have sustained the General Counsel's complaint allegations of violations of Section 8(a)(1) and (3) of the Act. I have found that the General Counsel has failed to sustain the allegations of the complaint respecting Section 8(a)(4) of the Act, which I shall dismiss.

IV. THE OBJECTIONS

A. *Language of Union Objections*

The two objections consolidated with the unfair labor practice allegations of the complaint are as follows:

Objection 3

> Shortly before voting, employees were told that if they voted against the Union, they would receive $1.00 per hour raises. This ''offer'' was made through an employee who was seen speaking to the employer, Gilbert Gamez, for a long time just before votes were cast. This information was reported to Wilbert Martinez, union organizer.

Objection 6

> The Union would note that the Employer was many times made statement threatening and coercing employees to discourage pro-union sentiment. Thus, the Employer has destroyed the ''laboratory-type conditions'' necessary for a fair election.

B. *Ruling on Objections*

1. Objection 3

The Union's objection 3 raises the contentions discussed supra in consideration of paragraph 5(e) of the complaint. Having sustained the contentions of the General Counsel that Gamez' conduct violated Section 8(a)(1) of the Act. I further find here that it also constitutes objectionable conduct.

2. Objection 6

The Union's objection 6 is a catchall contention which incorporates all allegations of the complaint occurring after the filing of the petition and before the election, i.e., paragraph 5 alleging various violations of Section 8(a)(1) of the Act. Having sustained those allegations supra, I further find that the conduct found violative of Section 8(a)(1) of the Act also constitutes objectionable conduct. *White Plains Lincoln Mercury*, 288 NLRB 1133 (1988).

3. Summary and conclusion

Based on the factual discussion appearing supra in the section addressing the alleged unfair labor practices, I sustain the Union's objections 3 and 6. Accordingly, I shall recommend that the Board direct a new election. I shall further recommend that the Board direct that the new notice of election comply with the remedial provisions set forth in *Lufkin Rule Co.*, 147 NLRB 341 (1964), and also specifically address the rights to employees to vote free of financial inducements.

REMEDY

Having found Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action to effectuate the purposes and policies of the Act.

I shall recommend that Respondent offer Valentin Garcia full and immediate reinstatement to the position he would have held, but for Respondent's wrongful refusal to rehire him on December 18, 1989.

Further Respondent shall be directed to make Valentin Garcia whole for any and all loss of earnings and other rights, benefits and emoluments of employment he may have suffered by reason of Respondent's discrimination against him, with interest. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987); see also *Florida Steel Corp.*, 231 NLRB 651 (1977), and *Isis Plumbing Co.*, 139 NLRB 716 (1962).

Respondent shall also be required to expunge any and all references to its refusal to rehire Valentin Garcia from its files and notify Valentin Garcia in writing that this has been done and that the refusal to rehire him will not be the basis for any adverse action against him in the future. *Sterling Sugars*, 261 NLRB 472 (1982).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by engaging in the following acts and conduct:

(a) Offering employees money to assault union organizers.

(b) Threatening to terminate employees if they talked with a union organizer.

(c) Threatening employees by telling them that other employees had been terminated for talking to a union organizer.

(d) Offering employees raises if they would vote no in a union election conducted by the National Labor Relations Board.

(e) Interrogating employees about their voting preferences so that employees who opposed the Union could be encouraged to vote.

4. Respondent violated Section 8(a)(3) and (1) of the Act by failing and refusing to rehire Valentin Garcia on December 18, 1989, because of his union activities.

5. Respondent has not otherwise violated the Act as alleged.

6. Respondent destroyed the laboratory conditions necessary to hold a free and fair election through the conduct described in the analysis of paragraph 5 of the complaint, supra.

Based on the above findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

I. ORDER RESPECTING UNFAIR LABOR PRACTICES

The Respondent, La Favorita, Inc., Denver, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Offering employees money to assault union organizers.

(b) Threatening to terminate employees if they talk with a union organizer.

(c) Threatening employees by telling them that other employees had been terminated for talking to a union organizer.

(d) Offering employees raises if they would vote no in the union election conducted by the National Labor Relations Board.

(e) Interrogating employees about their voting preferences so that employees who opposed the Union could be encouraged to vote.

(f) Failing and refusing to rehire employees because of their union activities.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer immediate employment to former employee Valentin Garcia to the position he would have held, but for Respondent's wrongful refusal to rehire him on December 18, 1989.

(b) Make whole former employee Valentin Garcia for any and all losses incurred as a result of Respondent's unlawful refusal to rehire him, with interest, as provided in the section of this Decision entitled ''Remedy.''

(c) Remove from its files any and all references to the refusal to rehire Valentin Garcia and notify him in writing that this has been done and that the fact of Respondent's refusal to rehire him will not be used against him in any future personnel actions.

(d) Post at each of its Denver, Colorado facilities copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 27, in English, Spanish, and such other languages as the Regional Director determines are necessary to fully communicate with employees, after being signed by Respondent's authorized representative, shall be posted for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure the notices are not altered, defaced, or covered by other material.

(e) Notify the Regional Director in writing within 20 days from the date of the Order what steps Respondent has taken to comply.

II. ORDER RESPECTING THE REPRESENTATION CASE

1. The Union's objections 3 and 6 are sustained and a new election shall be directed consistent with the Board's practice in such circumstances.

[4] If no exceptions are filed as provided by Sec. l02.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. l02.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

2. The following language, as provided in the Board's decision in *Lufkin Rule Co.*, 147 NLRB 341, 342 (1964), shall be included in the notice of election to be issued in this matter in both English and Spanish and such other languages as the Board and/or the Regional Director determine are reasonable and necessary to fully communicate with voters.

> The election conducted on November 3, 1989, was set aside because the National Labor Relations Board found that certain conduct of the Employer interfered with employees' exercise of a free and reasoned choice. Therefore a new election will be held in accordance with the terms of this notice. All eligible voters should understand that the National Labor Relations Act, as amended, gives each eligible voter the right to cast his or her ballot as he or she sees fit, and protects all voters in the exercise of that right, free from interference by any of the parties. Voters are specifically informed that the Employer or its agents are not permitted to ask you how you are going to vote, to suggest how you should vote or to offer you any thing of value such as a wage increase in order to cause you to vote against the Union.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which we appeared and presented evidence, the National Labor Relations Board has determined that we have violated the National Labor Relations Act and has ordered us to post this notice and to abide by its terms.

WE WILL NOT offer employees money to assault union organizers.

WE WILL NOT threaten to terminate employees if they talk with a union organizer.

WE WILL NOT threaten employees by telling them that other employees have been terminated for talking to a union organizer.

WE WILL NOT offer employees raises if they would vote no in the union election conducted by the National Labor Relations Board.

WE WILL NOT interrogate employees about their voting preferences so that employees who opposed the Union could be encouraged to vote.

WE WILL NOT fail and refuse to rehire employees because of their union activities.

WE WILL NOT in any like or related manner interfere with our employees' exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer immediate and full reemployment to employee Valentin Garcia to the position he would have held, but for our wrongful refusal to rehire him on December 18, 1989.

WE WILL make employee Valentin Garcia whole, with interest, for any and all losses he may have suffered as a result of our failure to rehire him on December 18, 1989.

LA FAVORITA, INC.